

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RANDY BORNHEIMER,)	
)	NO.: <u>1:23-cv-18</u>
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	
FLEETPRIDE, INC.,)	
)	<i>ELECTRONICALLY FILED</i>
Defendant.)	

COMPLAINT – CIVIL ACTION

Plaintiff, Randy Bornheimer, a citizen of the Commonwealth of Pennsylvania, by and through his counsel, Weisberg Cummings, P.C., brings this civil action for damages against the above-named Defendant, FleetPride, Inc., a business incorporated in and having principal place of business in the State of Texas, and complains and alleges as follows:

JURISDICTION AND VENUE

1. This Complaint alleges violations of the Pennsylvania Criminal Records Information Act (“CHRIA”), 18 Pa.C.S. § 9101, *et seq.*, insofar as Plaintiff was improperly denied employment with Defendant on the basis of his criminal history and not provided written notice of this decision as required by CHRIA.

2. The jurisdiction of this District Court is conferred by 28 U.S.C. § 1332, in that there is complete diversity of citizenship between the parties, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

3. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) because Defendant resides in this Judicial District and a substantial part of the events or omissions giving rise to these claims occurred in this Judicial District.

THE PARTIES

4. Plaintiff, Randy Bornheimer (hereinafter “Mr. Bornheimer” or “Plaintiff”), is an adult individual residing in 153 Main Street, Unit 306, Bradford, McKean County, Pennsylvania.

5. Defendant, FleetPride, Inc. (hereinafter “FleetPride” or “Defendant”), is a Texas corporation, headquartered at 600 Las Colinas Boulevard East, Irving, Dallas County, Texas.

6. FleetPride is a distributor of heavy-duty truck and trailer parts in the United States, as well as a provider of repair and maintenance services. In total, FleetPride operates over two-hundred and eighty (280) FleetPride branches, approximately sixty (60) service and repair locations, and/or five (5) regional

distributions centers throughout approximately forty-five (45) states, including the Commonwealth of Pennsylvania.

7. At all times material hereto, Defendant owned and operated a service center at 3088 US-219, Kane, McKean County, Pennsylvania (hereinafter “Kane Location”).

BACKGROUND

8. On October 6, 2022, Mr. Bornheimer responded to an open Parts Specialist position at FleetPride’s Kane Location by uploading his current resume and submitting an application for consideration and selection through Indeed, a third-party employment website for available job listings.

9. At the time Mr. Bornheimer applied for the Parts Specialist position at FleetPride, he was an individual with a criminal history.

10. Specifically Mr. Bornheimer has multiple misdemeanor convictions from 1998 and a felony conviction from 2012.

11. Approximately two (2) weeks after submitting his application, on or about October 18, 2022, Mr. Bornheimer received an update from Indeed that he was “[n]ot selected by employer” with regard to the Parts Specialist position at FleetPride.

12. Uncertain as to why he was not selected by FleetPride considering his qualifications and past experience related to the Parts Specialist position, and

concerned that his criminal history may be the reason, Mr. Bornheimer contacted FleetPride to follow up on his application and a further explanation as to their decision.

13. In doing so, after being placed on a brief hold, Mr. Bornheimer was informed by FleetPride that their Human Resources Department had denied his application after a criminal background check had discovered his criminal background, thus making him ineligible for employment with FleetPride.

14. CHRIA prohibits employers from denying employment on the basis of an employment applicant's criminal history record information file when the decision of whether or not to hire the applicant is unrelated to the applicant's suitability for employment in the position for which he has applied. Specifically, Section 9125 of CHRIA states the following in relevant part:

§ 9125. Use of records for employment.

(a) General rule. -- Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant, only in accordance with this section.

(b) Use of information. -- Felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

(c) Notice. -- The employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.

15. In this instance, Mr. Bornheimer's criminal history and background do not relate to his suitability for employment as a Parts Specialist with FleetPride at its Kane Location, especially considering his most recent conviction is approximately ten (10) years old.

16. Therefore, FleetPride's decision not to select/consider Mr. Bornheimer for this position and to deem him ineligible for employment altogether because he has a criminal history constitutes a violation of his rights under CHRIA.

17. Moreover, FleetPride further violated Mr. Bornheimer's rights under CHRIA by failing to notify him in writing that their decision not to hire him was based in whole or in part on his criminal history record information.

18. Accordingly, Mr. Bornheimer brings this lawsuit pursuant to CHRIA, which permits him to file a private right of action against FleetPride for these violations.

COUNT I

VIOLATIONS OF CHRIA

19. All prior paragraphs are incorporated herein as if set forth fully below.

20. Section 9125(b) of CHRIA prohibits employers from denying employment on the basis of a criminal record other than for felony and misdemeanor convictions. 18 Pa.C.S. § 9125(b).

21. Section 9125(b) of CHRIA also limits an employer's consideration of an applicant's felony and misdemeanor convictions for hiring purposes "*only* to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied." 18 Pa.C.S. § 9125(b) (emphasis added).

22. At the time Defendant denied Plaintiff employment on the basis of his criminal history, Plaintiff did not have any felony or misdemeanor convictions that would affect his suitability for employment in the position for which he had applied.

23. Because Defendant denied Plaintiff employment on the basis of his criminal history record information file under these circumstances, Defendant violated CHRIA.

24. In considering Plaintiff's criminal history record information file where his previous convictions did not relate to the position for which he had applied, Defendant willfully violated CHRIA, 18 Pa.C.S. § 9125.

25. Despite having used Plaintiff's criminal history record information in its hiring decision, Defendant willfully failed to notify Plaintiff of this use in writing, as required by CHRIA, 18 Pa.C.S. § 9125(c).

WHEREFORE, Plaintiff, Randy Bornheimer, respectfully requests judgment against Defendant, FleetPride, Inc., with all damages available under Section 9183 of the Pennsylvania Criminal History Records Information Act,

including actual and real damages, exemplary and punitive damages, reasonable costs of litigation, attorneys' fees, and any such other relief as this Honorable Court deems just and appropriate, in an amount in excess of \$75,000, exclusive of interests and costs. Plaintiff further respectfully requests that the Court enter an Order prohibiting Defendant from continuing its illegal policy, practice, or custom of discriminating against job applicants on the basis of their criminal history.

Respectfully submitted,

WEISBERG CUMMINGS P.C.

Dated: January 27, 2023

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